

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

P&M SERVICES, INC.,)	CIVIL ACTION NO. 04-40173-FDS
a Tennessee corporation,)	(BBO #633929)
)	
Plaintiff)	
)	
v.)	
)	
ANDRE LAVALLEE,)	
an individual,)	
)	
Defendant)	

MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

NOW COMES defendant, Andre Lavallee, by and through his attorneys, Brooks Kushman P.C. and Bowditch & Dewey, LLP, and states that the Complaint filed against him for patent infringement and for inducing patent infringement fails to state a claim upon which relief can be granted because Mr. Lavallee was, at all relevant times, an employee acting within the scope of his authority and is therefore not personally liable for the acts alleged.

For the reasons more fully set forth in his accompanying brief, Mr. Lavallee asks this Court to dismiss the Complaint against him filed by P&M Services, Inc., to award him all attorneys' fees and costs so wrongfully incurred, and grant all such other relief as this Court deems fair and equitable.

Respectfully submitted,
ANDRE LAVALLEE
By his attorneys,

/s/ James P. Hoban
James P. Hoban (BBO #633929)
Bowditch & Dewey, LLP
311 Main Street, P.O. Box 15156
Worcester, MA 01615-0156
(508) 791-3511

and

Mark A. Cantor (#P32661)
Seth E. Rodack (#P55738)
1000 Town Center
Twenty-Second Floor
Southfield, MI 48075-1238
(248) 358-4400

Dated: October 6, 2004

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), I, James P. Hoban, local counsel for defendant Andre Lavallee, hereby certify that Seth Rodack, also counsel to Lavallee, conferred with Mark Demorest, counsel for plaintiff P&M Services, Inc., on Friday, October 1, 2004, and again on Wednesday, October 6, 2004, by telephone in an attempt in good faith to resolve or narrow the issues which are the subject of the Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6); however, no agreement was reached.

/s/James P. Hoban
James P. Hoban